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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/828,005	03/27/97	LAVON G	6563

QM12/1130

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EXAMINER	
REICHLE,K	
ART UNIT	**PAPER NUMBER**
3761	21

DATE MAILED: 11/30/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
08/828005	LaVon et al
Examiner	**Group Art Unit**
Reichle	3761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 month ~~MONTH(S)~~ FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

☒ Responsive to communication(s) filed on 9-1-00.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 11-12, 14, 17, 20, 32-33, 37-39, 43-44, 82-89 is/are pending in the application.

Of the above claim(s)_____ is/are withdrawn from consideration.

☐ Claim(s)_____ is/are allowed.

☐ Claim(s)_____ is/are rejected.

☐ Claim(s)_____ is/are objected to.

☒ Claim(s) 11-12, 14, 17, 20, 32-33, 37-39, 43-44, 82-89 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The proposed drawing correction, filed on_____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on_____ is/are objected to by the Examiner.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 11 9(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number)_____.

☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received:_____.

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s)._____

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other_____

Office Action Summary

The request filed on September 1, 2000 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/828,005 is acceptable and a CPA has been established. An action on the CPA follows.

In the parent application, Applicants elected the species of Figures 1-2 in response to an election requirement, see Paper No 16, which shows a one layer first absorbent core component. However, none of the now pending claims, including new claims 82-89, read on such elected species because they required a multilayer first absorbent core component. (It is noted Applicants have not indicated whether these new claims are readable upon the previously elected species as required by the previous election). Thus, submission of such amendment is considered an indication that a shift in election is desired. However, the claims are still directed to more than one patentably distinct species of the invention. Therefore, a new election requirement follows:

This application contains claims directed to the following patentably distinct species of the claimed invention: the species of Figures 9-10 and one of the acquisition layer compositions, e.g. page 18, line 20- page 20, last line and one of the acquisition/distribution layer compositions, e.g, page 21, line 1 - page 22, line 25 and one of the second absorbent core component materials and one of the third absorbent core component materials and one of the storage/redistribution layer compositions, e.g., page 22, line 26 - page 24, line 24; or the species of Figures 11-12 and one of the acquisition layer compositions and one of the acquisition/distribution layer compositions and one of the second absorbent core component materials and one of the third absorbent core component materials and one of the storage/redistribution layer compositions; or the species of

Figures 11 and 13 and one of the acquisition layer compositions, and one of the acquisition/distribution layer compositions and one of the second absorbent core component materials and one of the third absorbent core component materials and one of the storage/redistribution layer compositions.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 33 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

For example, a complete election could include the election of the species of Figures 9-10, an acquisition layer of absorbent foam, an acquisition/distribution layer of open celled absorbent polymeric foam, a second absorbent core component of fibrous wet-laid web materials, a third absorbent core component of fibrous nonwoven material, and a storage/ redistribution layer of collapsible polymeric foam material.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication should be directed to K. Reichle at telephone number (703) 308-2617.

K.M. Reichle
Karin M. Reichle
Patent Examiner

K. Reichle:bhw
November 17, 2000